

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM

TO: Chief, Dockets Division

FROM: Associate General Counsel, Litigation Division

SUBJECT: Bell Atlantic Personal Communications, Inc. v. FCC & USA, No. 94-1157 and Panhandle Telephone Cooperative, Inc. v. FCC & USA, No. 94-1158. Filing of two new Petitions for Review in the United States Court of Appeals for the District of Columbia Circuit.

DATE: March 8, 1994

Docket No(s). Gen. Docket No. 90-314

File No(s). RM-7140, Rm-7175, RM-7618,
PP-6 through PP-10, PP-12, P-13,
PP-15 through PP-20, PP-26, PP-27,
PP-41 through PP-52, PP-54 through 68,
PP-70, PP-72 through PP-78

This is to advise you that Bell Atlantic Personal Communications, Inc. and Panhandle Telephone Cooperative, Inc. on March 7, 1994, filed with the United States Court of Appeals for the District of Columbia Circuit:

☒ Section 402(a) Petitions for Review
☐ Section 402(b) Notices of Appeal

of the following FCC decision: In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, FCC 93-550, released February 3, 1994. In the order under review, the Commission granted pioneer's preferences to three applicants for personal communications service (PCS) licenses while denying the pioneer's preference requests of 47 other applicants. The petitioners, whose pioneer's preference requests were denied, claim that the FCC arbitrarily misapplied its pioneer's preference criteria in this proceeding.

Due to a change in the Communications Act, it will not be necessary to notify the parties of this filing.

The Court has docketed these cases as Nos. 94-1157 and 94-1158 and the attorney assigned to handle the litigation of these cases is James A. Carr.


Daniel M. Armstrong

cc: General Counsel
Office of Public Affairs
Shepard's Citations

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BELL ATLANTIC PERSONAL COMMUNICATIONS INC.

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,

Respondents.

OFFICE OF
GENERAL COUNSEL

Case No.

94-1157

filed 3/7/94

PETITION FOR REVIEW

Bell Atlantic Personal Communications, Inc. ("Bell Atlantic"), pursuant to 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342 and 2344, and Rule 15(a) of the Federal Rules of Appellate Procedure, petitions this Court for review of the Federal Communication Commission's Third Report and Order in the matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Docket No. 90-314, FCC No. 93-550, RM-7140, RM-7175, RM-7618, PP-6 through PP-10, PP-12, PP-13, PP-15 through PP-20, PP-26, PP-27, PP-41 through PP-52, PP-54 through PP-68, PP-70, PP-72 through PP-78 (released February 3, 1994) (the "Third Report and Order"). A summary of this order was published in the Federal Register on February 28, 1994. See 59 Fed. Reg. 9419 (Feb. 28, 1994).^{1/}


1. Because the award of a pioneer's preference is not itself the grant of a license, review under 47 U.S.C. § 402(a) is appropriate rather than appeal under 47 U.S.C. § 402(b). If this Court decides otherwise, Bell Atlantic respectfully requests that this petition for review be construed as a timely notice of appeal.

In the Third Report and Order, the Commission granted pioneer's preferences for licenses of 2 GHz personal communications services to three preference applicants, and denied the requests of 47 other applicants, including the request of Bell Atlantic. Relief is sought on the grounds that the Third Report and Order is arbitrary, capricious and otherwise contrary to law. Venue is proper under 28 U.S.C. § 2343.

Bell Atlantic requests that this Court hold unlawful, vacate, enjoin, and set aside the Third Report and Order, and that the Court grant such other and further relief as may be proper and just under the circumstances.

Respectfully submitted,

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March 7, 1994

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

OFFICE OF
GENERAL COUNSEL

Panhandle Telephone Cooperative, Inc.)

Petitioners,)

v.)

Federal Communications Commission and)
United States of America,)

Respondents.)

Case No. 94-1158

Filed: 3/7/94

PETITION FOR REVIEW

Panhandle Telephone Cooperative, Inc., ("Panhandle") by its attorneys, petitions this Court for review of the Third Report and Order of the Federal Communications Commission ("Commission") in the proceeding entitled In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, FCC 93-550, GEN Docket 90-314, RM-7140, RM-7175, RM-7618, PP-6 through PP-10, PP-12, PP-13, PP-15 through PP-20, PP-26, PP-27, PP-41 through PP-52, PP-54 through PP-68, PP-70, PP-72 through PP-78 (released February 3, 1994), 58 Fed. Reg. 9419 (February 28, 1994). ("Third Report and Order"). A copy of the Third Report and Order is attached.

This Petition is filed pursuant to 28 U.S.C. §§ 2342, 2344; Section 402(a) of the Communications Act of 1934,

as amended, 47 U.S.C. § 402(a); and Rule 15 of the Federal Rules of Appellate Procedure. Venue lies in this Court pursuant to 28 U.S.C. § 2343.

The Third Report and Order denied Petitioner's request for a pioneer's preference for the provision of innovative broadband Personal Communications Services (PCS)¹ to rural areas. Petitioners ask this Court to vacate and set aside that portion of the Third Report and Order which rejected Petitioner's request for a pioneer's preference, and direct the Commission to grant Petitioner's pioneer's preference request or, in the alternative, remand the matter to the Commission for an adjudicatory decision consistent with the Administrative Procedure Act, 5 U.S.C. § 706.

This prayer for relief is based on the grounds that the Third Report and Order is contrary to the Commission's stated pioneer's preference rules²; is arbitrary, capricious and

¹Personal communications services have been defined by the Commission as "a family of mobile or portable radio communications services which could provide services to individuals and business, and be integrated with a variety of competing networks." Notice of Proposed Rule Making and Tentative Decision, In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket 90-314, 7 FCC Rcd 5676 (1992).

²The Commission's rules governing the application for, and award of, a pioneer's preference are set forth at 47 C.F.R. §§ 1.402, 1.403 and 5.207.

unsupported by reasoned analysis; exceeds the Commission's statutory authority and jurisdiction; is unsupported by the record below; unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court; and otherwise violates the provisions of the Administrative Procedure Act, 5 U.S.C. § 706.

Respectfully submitted,

Panhandle Telephone Cooperative, Inc.

By 

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March 7, 1994